

County Council Of Howard County, Maryland

2010 Legislative Session

Legislative Day No. **4**

Resolution No. 37 -2010

Introduced by: The Chairperson at the request of the County Executive

A RESOLUTION adopted pursuant to the Maryland Economic Development Revenue Bond Act providing for the consent by Howard County, Maryland to (1) the transfer of the 634-unit residential rental housing facility located in Elkridge, Maryland known as the “Sherwood Crossing Apartments,” by Sherwood Crossing Apartments, LLC to WLA Sherwood Investors VI, L.L.C. (the “Purchaser”), the costs of which facility were refinanced with the proceeds of the County’s Variable Rate Demand Multifamily Housing Revenue Refunding Bonds (Sherwood Crossing Apartments) Series 2003, and (2) the assumption by the Purchaser of all of the borrower’s obligations under the related documents; making certain findings; and authorizing the County Executive and other County officials to do all acts and execute all documents necessary in connection therewith.

Introduced and read first time _____, 2010.

By order _____
Stephen LeGendre, Administrator

Read for a second time at a public hearing on _____, 2010.

By order _____
Stephen LeGendre, Administrator

This Resolution was read the third time and was Adopted____, Adopted with amendments____, Failed____, Withdrawn____, by the County Council on _____, 2010.

Certified By _____
Stephen LeGendre, Administrator

Approved by the County Executive _____, 2010

Ken Ulman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN ALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **RECITALS**

2 On June 27, 1985, Howard County, Maryland, a body politic and corporate and a
3 political subdivision of the State of Maryland (the “County”), issued and sold its Howard
4 County, Maryland Multifamily Housing Revenue Bonds (Sherwood Crossing Limited
5 Partnership Project) 1985 Series A, in the original principal amount of \$32,500,000,
6 dated as of June 1, 1985 (the “Prior Bonds”) pursuant to and in accordance with the
7 Maryland Economic Development Revenue Bond Act (the “Act”). The County caused
8 the proceeds of the Bonds to be deposited with Irving Trust Company, as trustee (the
9 “Prior Trustee”), pursuant to a Trust Indenture dated as of June 1, 1985, and caused the
10 Prior Trustee to make a loan to Sherwood Crossing Limited Partnership in the principal
11 amount of \$32,500,000 (the “Prior Loan”), for the purpose of financing a portion of the
12 cost of the acquisition and construction of a certain facility within the geographical
13 boundaries of the County (the “Facility”).

14 The Facility is a residential rental housing community known as the Sherwood
15 Crossing Apartments. It consists of and includes:

16 (a) approximately 44 acres of land located at 6731 Old Waterloo Road, in
17 Elkridge, Maryland, together with any and all improvements existing thereon,

18 (b) 21 two- and three-story buildings containing approximately 634 one-, two-
19 and three-bedroom residential rental apartment units, and facilities functionally related
20 and subordinate thereto (collectively, the “Buildings”),

21 (c) such equipment and machinery, and any or all other improvements therein,
22 as may be necessary or useful in connection with the operation of the Facility, and

23 (d) such other interests in land as may be necessary or suitable for the
24 foregoing, including roads and rights or access, utilities and other necessary site
25 preparation facilities.

26 On December 16, 2002, pursuant to Council Resolution 187-2002, approved by
27 the County Executive of the County on December 18, 2002, the County approved the

1 transfer of ownership of the Facility to Sherwood Crossing Apartments, LLC, a Delaware
2 limited liability company (“Seller”), and the assumption of the obligations under the
3 documents then in place to secure the Prior Bonds (the “Prior Bond Documents”) by
4 Seller. On December 31, 2002, Seller purchased the Facility and assumed the obligations
5 under the Prior Bond Documents.

6 Further, on March 12, 2003, Seller requested that the County issue new Bonds to
7 allow Seller to repay a portion of the Prior Loan and refund the Prior Bonds in their
8 entirety. Pursuant to Council Resolution No. 36-2003 of the 2003 Legislative Session,
9 approved by the County Executive of the County on May 7, 2003, the County issued the
10 \$23,635,000.00 Howard County, Maryland Variable Rate Demand Multifamily Housing
11 Revenue Refunding Bonds (Sherwood Crossing Apartments) Series 2003 (the “Bonds”).
12 The terms of the Bonds were established pursuant to a Trust Indenture dated as of July
13 15, 2003 (the “Trust Indenture”) between the County and the Bank of New York (now
14 the Bank of New York Mellon) as Trustee (the “Trustee”), and the loan funded by the
15 Bonds (the “Loan”) was made pursuant to a Financing Agreement dated as of July 15,
16 2003, among the County, the Seller, and the Trustee (the “Financing Agreement”).
17 Fannie Mae is the “Credit Provider” with respect to the Bonds.

18 In order to ensure that (1) the Facility would be a project for “residential rental
19 property” as described in Section 103(b)(4)(A) of the Internal Revenue Code of 1954, as
20 amended, and the regulations thereunder, and (2) interest on the Bonds would be exempt
21 from federal income taxation, the Seller, the County, and the Trustee entered in an
22 Amended and Restated Regulatory Agreement dated as of July 18, 2003 (the “Regulatory
23 Agreement”). The Bonds, the Indenture, the Financing Agreement, the Regulatory
24 Agreement, and all other documents evidencing and securing the Bonds and the Loan and
25 all amendments and supplements to any of the foregoing are referred to herein as the
26 “Bond Documents”.

27 Section 2.5 of the Regulatory Agreement provides in part that:

28 “SECTION 2.5. Limitation Upon Transfer or Other Disposition of Mortgaged
29 Property. The Owner will not sell, convey, transfer or otherwise dispose of the

1 Mortgaged Property without obtaining the prior written consent of the Issuer, which
2 consent shall be conditioned solely upon receipt of evidence satisfactory to the Issuer that
3 (a) the Owner's purchaser or transferee has assumed in writing and in full the Owner's
4 duties and obligations under the Regulatory Agreement, provided that such consent shall
5 not be required for any transfer to or by the Credit Provider upon or following
6 foreclosure, deed in lieu of foreclosure or comparable conversion of the Loan and (b)
7 until the Loan has been paid in full, the requirements of the Transaction Documents
8 relating to such transfer have been satisfied.”

9 In addition, Section 5.8 of the Financing Agreement provides in part as follows:

10 “SECTION 5.8 Assignment of Agreement. This Agreement may be assigned,
11 and the Mortgaged Property may be sold or otherwise disposed of, as a whole or in part,
12 by the Borrower, but only with the prior written consent of the Issuer (which consent
13 shall not be unreasonably withheld) and the Credit Provider. Any such assignment or
14 other disposition, or leasing as a whole, which is consented to by the Issuer and the Credit
15 Provider shall be subject to the following conditions:

16 (a) the assignee, lessee or transferee shall assume in writing all of the Borrower’s
17 obligations hereunder and under the other Transaction Documents, to the extent of the
18 interest acquired; and, subject to the provisions of Section 3.4 of this Agreement the
19 Borrower may, upon its request, be relieved of its obligations hereunder and under such
20 other documents to the extent of the interest transferred; and

21 (b) prior to any such assignment, sale or other disposition of the Mortgaged
22 Property, in whole or in part, the Borrower shall obtain and furnish to the Trustee an
23 opinion of Bond Counsel to the effect that the proposed transaction will not adversely
24 affect the exclusion from the gross income of the Owners thereof for federal income tax
25 purposes of the interest payable on the Bonds.”

26 The County has received a letter dated February 16, 2010 on behalf of WLA
27 Sherwood Investors VI, L.L.C., a Delaware limited liability company (“WLA”).
28 Pursuant to this letter, WLA has asked that the County consent to the transfer of the
29 Facility from the Seller to WLA, together with the assumption of the Loan, and the
30 assumption of all of the Seller’s obligations under the Bond Documents, by WLA,
31 including, without limitation, all of the Seller’s obligations under the Regulatory
32 Agreement.

33 The County is willing to consent to (1) the transfer of the Facility to WLA and (2)
34 the assumption of the Seller's obligations with respect to the Bond Documents by WLA.

35 Now therefore, in accordance with the Act:

1 **Section 1. Be it resolved by the County Council of Howard County,**
2 **Maryland,** That the words and terms used in this Resolution (including the Recitals set
3 forth above) that are defined in the Act shall have the meanings indicated in the Act,
4 unless the context clearly requires a contrary meaning.

5 **Section 2. And be it further resolved by the County Council of Howard**
6 **County, Maryland,** That acting pursuant to the Act, it is hereby found and determined as
7 follows:

8 (1) WLA will be a “facility user” within the meaning of the Act.

9 (2) The Facility is and continues to be a “facility” within the meaning of the
10 Act.

11 **Section 3. And be it further resolved by the County Council of Howard**
12 **County, Maryland,** (a) That the County shall consent to the transfer of the Facility to
13 WLA and the assumption of the Seller's obligations under the Bond Documents by WLA
14 by executing and delivering such documents and certificates as the County Executive
15 may determine to be necessary to evidence such consent, subject to (i) compliance by
16 WLA with the applicable provisions of Section 2.5 of the Regulatory Agreement and
17 Section 5.8 of the Financing Agreement; and (ii) evidence that Fannie Mae, as the Credit
18 Provider, has also consented to such assumptions. (In determining whether any or all of
19 such requirements have been complied with, the County Executive may, in his discretion,
20 rely upon the advice of Miles and Stockbridge, P.C., Bond Counsel; and any such
21 determination by the County Executive shall be conclusive.)

22 **Section 4. And be it further resolved by the County Council of Howard**
23 **County, Maryland,** That the County Executive and the other officials of the County are
24 hereby authorized and empowered to do any and all such acts and execute on behalf of
25 the County such documents and certificates as the County Executive may determine to be
26 necessary or desirable in connection with (a) the giving of such consent, (b) any
27 modification of the Bond Documents in connection with such transfer and assumption
28 and (c) any other matters related thereto, subject to the limitations set forth in the Act, the

1 Bond Documents and this Resolution. All such documents and certificates shall be
2 executed in the name of the County and on its behalf by the County Executive by his
3 manual signature or, for tax-related documents, by the Director of Finance of the County
4 by her manual signature; and, if such document or certificate is to be under seal, the
5 corporate seal of the County or a facsimile thereof shall be impressed or otherwise
6 reproduced thereon and attested by the Chief Administrative Officer of the County by his
7 manual signature. The final approval of such certificates and documents, and of the
8 related transaction, shall be evidenced by the manual signature of the County Executive
9 or, if applicable, the Director of Finance upon such certificates and documents.

10 **Section 5. And be it further resolved by the County Council Of Howard**
11 **County, Maryland,** That the provisions of this Resolution are severable, and if any
12 provision, sentence, clause, section or part hereof is held to be illegal, invalid or
13 unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity
14 or unconstitutionality, or inapplicability shall not affect or impair any of the remaining
15 provisions, sentences, clauses, sections, or parts of this Resolution or their application to
16 other persons or circumstances. It is hereby declared to be the legislative intent that this
17 Resolution would have been passed if such illegal, invalid or unconstitutional provision,
18 sentence, clause, section or part had not been included herein, and if the person or
19 circumstances to which this Resolution or any part hereof are inapplicable had been
20 specifically exempted therefrom.

21 **Section 6. And be it further resolved by the County Council of Howard**
22 **County, Maryland,** That this Resolution shall take effect on the date of its approval by
23 the County Executive.